Supreme Court, U.S.
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No. 92-1239

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

J. E. B.,

Petitioner,

v.

T. B.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

SUPPLEMENTAL BRIEF OF RESPONDENT

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SUPPLEMENT TO ARGUMENT

In Respondent's Brief on the Merits, Page 18, the Respondent mentioned that in the struck jury system used in Alabama it is necessary for the litigants to use their strikes alternately until the proper number of people remain to constitute the jury. Since the filing of that brief the Respondent has discovered an as yet unpublished opinion from the Court of Criminal Appeals of Alabama: *Pettway v. State*, __ So 2d __ (Ala.Cr.App. 1993) [CR-91-842, March 5, 1993] (1993 WL 56272 (Ala.Cr.App.)); *cert. denied, Ex parte Pettway*, __ So. 2d __ (Ala. 1993) [1921251, August 20, 1993] (1993 WL 314881 (Ala.)).

This case, in which a prosecutor surrendered the state's last three peremptory strikes to the court, illustrates one problem which may result when the prosecutor exhausts the strikes for which he can articulate a reason before the jury has reached a proper size. This problem would be compounded if the

litigants had to be prepared to articulate gender-neutral, as well as race-neutral reasons for strikes in the event that the court found a prima facie case of discrimination in the exercise of the strikes.

For the convenience of the Court copies of *Pettiway v. State* have been lodged with the Clerk of the Court.

RESPECTFULLY SUBMITTED,

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